

REMARKS

The present application includes pending claims 1-14 and 36-53, all of which have been rejected. Claims 1, 4-14, 36, and 39-50 have been amended. Claims 54 and 55 have been added.

Claims 1-10, 12-14, 36-45, 47-53 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2005/0028208 ("Ellis 208") in view of U.S. Patent No. 6,774,926 ("Ellis 926") and "common knowledge in the art." Claims 11 and 46 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis 208 in view of Ellis 926 and U.S. Patent No. 6,665,384 ("Daum").

The Applicants respectfully traverse these rejections for at least the reasons previously discussed during prosecution and the following.

I. Claims 1, 36, And The Claims Depending Therefrom

A. Ellis 208

Claim 1 recites, in part, "creating a user-defined schedule of media stored at the first location using the television at the first location; pushing media from the first location to the at least one media peripheral at the second location according to the user-defined schedule of media created at the first location." Claim 36 recites similar limitations.

The claims are clear that a user at a first location, such as a first home, defines and creates a schedule of media, not just a command to record a program that is to be broadcast or indicating a reminder for a particular program. Media is then pushed from the first location, such as the first home, to the at least one media peripheral at the

second location, such as a second home, according to the user-defined media lineup created at the first location.

The Office Action relies on Ellis 208 at ¶¶ 99-100 with respect to these limitations. See November 16, 2010 Office Action at page 3. As explained below, however, reliance on these cited portions of Ellis 208 is misplaced.

The cited paragraphs of Ellis disclose the following:

In an illustrative system configuration using Internet service system 61, remote program guide access device 24 is a user's personal computer at work, Internet service system 61 is a web server at a cable system headend, and user television equipment 22 at the user's home contains a set-top box on which the user's program guide is implemented. Using this arrangement, the user may access features of the program guide such as setting reminders or notifications, viewing listings, program recording, setting favorites, parental control, sending messages, polling for status, or any other suitable function. For example, if a child in the user's home desires permission to watch a parentally controlled program while the user is at work, the user may access a suitable web page provided by Internet service system 61 that allows the user to enter a password and adjust the program guide parental control settings. The changed settings allowing the child access to the desired program are then automatically transferred from Internet service system 61 to user television equipment 22, while the user is still at work.

As another example, the user at work may interact with the program guide on user television equipment 22 via Internet service system 61 to select programs for recording on the user's home videocassette recorder, or to schedule program reminders that will appear on the user's home television or remote program guide access device just before a program is broadcast.

Ellis at ¶¶ 99 -100 (emphasis added).

As shown above, the cited portions of Ellis 208 disclose that a user may set reminders with respect to programs that are being broadcast and to select broadcast programs to record. Further, the cited portions of Ellis 208 disclose that a user may adjust parental controls to allow a child to watch a broadcast program.

However, there is nothing in the cited portions of Ellis 208 that describes, teaches, or suggests that the user him/herself schedules media that is to be sent from his/her location to another location. That is, while the cited portions of Ellis 208 disclose that a user may select programs to record or reminders for particular programs, they do not describe, teach or suggest that the user schedules media to be broadcast.

Further, even if one assumes that selecting programs to record is scheduling a media lineup (which the Applicants do not assume), there is nothing in the cited portions of Ellis 208 that describes, teaches or suggests that media is pushed from a first location to a media peripheral at a second location according to the user-defined schedule of media.

Thus, contrary to the assertion in the Office Action, Ellis 208 does not describe, teach, or suggest "creating a user-defined schedule of media stored at the first location using the television at the first location; pushing media from the first location to the at least one media peripheral at the second location according to the user-defined schedule of media created at the first location," as recited in claim 1, for example.

Notably, a previous Office Action acknowledges that "Ellis [208] does not explicitly indicate ... defining a schedule of media at a first location using the TV and pushing the media from that location." See February 2, 2009 Office Action at page 3.

For at least these reasons, the Applicants respectfully request reconsideration of the rejection of claims 1, 36, and the claims that depend therefrom.

B. Ellis 926

Claim 1 also recites, in part, “constructing, at the first location, one or more media channels from user selected and scheduled media content; and communicating in a peer-to-peer manner the one or more media channels from the first location to the second location via a closed and secure communication.” The Office Action acknowledges that Ellis 208 does not describe, teach, or suggest these limitations. *See* November 16, 2010 Office Action at pages 3-4.

In an attempt to overcome these acknowledged deficiencies, the Office Action cites Ellis 926 at column 1, lines 47-52, column 3, lines 19-29, and column 7, lines 27-37 and lines 49-57. *See id.* at page 4.

The Office Action asserts that Ellis 926 discloses “peer to peer,” but Ellis 926 fails to mention “peer to peer.” The Office Action has not shown that Ellis expressly or necessarily teaches “peer to peer” as known to one of ordinary skill in the relevant art at the time of the invention. Thus, for at least these reasons, the Applicants respectfully request reconsideration of the claim rejections.

Additionally, while Ellis 926 teaches a user scheduling a “broadcast,” and Ellis teaches capturing video and transmitting the captured video, the Office Action has not shown where any of the cited references teaches pushing the “captured video” according to the user schedule from a system of a first user to a system of a second user, let alone to a “media peripheral” communicatively coupled to the system of the second user. The Office Action has not identified the “media peripheral” to which the

media is allegedly pushed. Thus, for at least these reasons, the Applicants respectfully request reconsideration of the claim rejections.

Further, the Office Action does not specifically identify in Ellis 926 the claimed "media content" and "one or more media channels" constructed by the user, at the first location, from the "media content." Ellis 926 teaches capturing video and transmitting the captured video for delivery to other users. Ellis 926 teaches a user setting a schedule for broadcasting of a personal channel (FIG. 14, screen 196). The schedule information is provided to the "database 54" at "data storage facility 52." The Office Action has not shown that the system of a first user transmits anything according to the schedule set by the user and held at the "data storage facility 52." Thus, for at least these reasons, the Applicant respectfully request reconsideration of the claim rejections.

Ellis 926 discloses that a user captures video, and can edit the captured video, but capturing and editing is not the claimed "constructing, at the first location, one or more media channels" in that Ellis 926 does not describe, teach, or suggest that the user schedules the captured video and then constructs a "media channel" from the user selected and scheduled captured video. (see, e.g., FIG. 15) The scheduling is separate and post-editing of the captured video. Further, the scheduling is done separately using the "data storage facility 52" via "screen 196," and without a subsequent "constructing" step by the user to produce the claimed "one or more media channels". For at least these reasons, the Applicants respectfully request reconsideration of the claim rejections.

Additionally, the Office Action implicitly acknowledges that neither Ellis 208, nor Ellis 926 describes, teaches, or suggests "communicating in a peer-to-peer manner the

one or more media channels from the first location to the second location **via a closed and secure communication.**" See November 16, 2010 Office Action at page 4. In an attempt to overcome this deficiency, the Office Action asserts "'official notice' that communication streams sent over the Internet should be sent over a secure connection." See *id.*

The Applicants previously challenged this assertion of Official Notice with respect to "communicating in a peer-to-peer manner the one or more media channels from the first location to the second location **via a closed and secure communication.**" See November 3, 2010 Response. Based on the fact that the Office Action still has not submitted a reference that expressly or necessarily describes, teaches, or suggests these limitations, the Applicants once again challenge the assertion of Official Notice for at least the reasons previously set forth. Alternatively, if the Examiner's assertions are based on the personal knowledge of the Examiner, then under MPEP § 2144.03(C) and 37 C.F.R. § 1.104(d)(2), the Examiner's assertions must be supported by an affidavit from the Examiner.

The Applicants specifically challenge the assertion of Official Notice with regard to "communicating in a peer-to-peer manner the one or more media channels from the first location to the second location **via a closed and secure communication,**" as recited in claim 1. Claim 36 recites similar limitations.

C. Obviousness Guidelines

The Applicants previously stated the following:

If the present rejection is maintained, or any new rejection based on obviousness is asserted, however, the Applicants respectfully request that any subsequent action: 1) **identify**

the specific Rationale (i.e., by explicitly indentifying one of **A through G** noted above) in the Guidelines that the Examiner is using to support the obviousness rejection so that the Applicants may more clearly address the Examiner's concerns, and 2) **state on the record** the **required** factual findings to support the Rationale that the Examiner has chosen.

See November 3, 2010 Response at pages 16-17.

In response, the Office Action states the following:

It is clear from the 103 rejection that the examiner was providing motivation for one of ordinary skills to improve or combine the prior art references.

See November 16, 2010 Office Action at page 11.

Thus, the Office Action relies on Rationale G ("some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention").

However, this Rationale **requires** certain **factual** findings that the Office Action has not fully articulated. In particular,

To reject a claim based on this rationale, Office personnel **must** resolve the *Graham* factual inquiries. Office personnel must then articulate the following:

(1) a finding that there was some teaching, suggestion, or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;

(2) a finding that there was a reasonable expectation of success ...

Initially, the Office Action has **not** resolved all the *Graham* factual inquiries. For example, while subjectively noting, in general, “one or ordinary skill in the art,” the Office Action does not “resolv[e] the level of ordinary skill in the pertinent art.”

Next, the Office Action makes no factual finding (or even subjective conclusion) as to a “reasonable expectation of success” with respect to the pending claims.

As indicated recently, “[i]t is important for Office personnel to recognize that when they do choose to formulate an obviousness rejection using one of the rationales suggested by the Supreme Court in *KSR* and discussed in the *2007 KSR Guidelines*, they are to adhere to the instructions provided in the MPEP regarding the **necessary factual findings**.” See September 1, 2010 Examination Guidelines Update, 75 Fed.Reg. 169.

Indeed, “if a rejection has been made that omits one of the required factual findings, and in response to the rejection a practitioner or inventor points out the omission, Office personnel **must** either withdraw the rejection, or repeat the rejection **including all the required factual findings**.” See *id.*

Further, “[s]imply stating the principle ... without providing an explanation of its applicability to the facts of the case at hand is generally not sufficient to establish a *prima facie* case of obviousness.” See *id.*

“[T]he Board cannot simply reach conclusions based on its own understanding or experience – or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.” See *In re Zurko*, 258 F.3d 1379, 1386 (Fed. Cir. 2001).

Thus, as indicated above, the Applicants respectfully request that any subsequent Office Action that asserts an obviousness rejection **based on Rationale G**, provide **the required factual findings** with respect to that rationale.

II. Claims 5 And 40

Claim 5 recites, in part, "powering said media peripheral on or off; scanning said media peripheral in angle about at least one axis of rotation; transferring stored media from the media peripheral to the first system; transferring stored media from the first system to the media peripheral; transferring software from the first system to the media peripheral; transferring status information from the media peripheral to the first system; initiating a test of the media peripheral; initiating a trick mode of the media peripheral; determining whether the media peripheral is within communication range of the second system; putting the media peripheral into a sleep state; or changing a parameter of the media peripheral." Claim 40 recites similar limitations.

Instead of specifically addressing **each and every** limitation of claims 5 and 40, the Office Action merely cites Ellis 208 at "¶101" as disclosing all of these limitations. See November 16, 2010 Office Action at pages 5 and 12.

However, the Office Action does not demonstrate that any of the cited references describes, teaches, or suggests, for example, (1) "scanning said media peripheral in angle about at least one axis of rotation," (2) "transferring status information from the media peripheral to the first system," (3) "initiating a test of the media peripheral," (4) "initiating a trick mode of the media peripheral," (5) "determining whether the media peripheral is within communication range of the second system," (6) "putting the media peripheral into a sleep state," or (7) "changing a parameter of the media peripheral."

There is nothing in Ellis at “¶101” that describes, teaches, or suggests each and every one of these limitations.

Thus, for at least these reasons, the Office Action has not established a *prima facie* case of unpatentability with respect to claims 5 and 40.

III. The Rejection Of Claims 11 And 46

The Applicants respectfully request reconsideration of the rejection of claims 11 and 46 for at least the reasons discussed above.

IV. Conclusion

In general, the Office Action makes various statements regarding the pending claims and the cited references that are now moot in light of the above. Thus, the Applicants will not address such statements at the present time. The Applicants expressly reserve the right, however, to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a future rejection).

The Applicants respectfully request reconsideration of the claim rejections. If the Examiner has any questions or the Applicants can be of any assistance, the Examiner is invited to contact the undersigned attorney. In particular, **if the Examiner is considering an amendment that would lead to allowance**, the Applicants would be more than willing to work with the Examiner to expedite prosecution towards allowance, as opposed to pursuing the present application through an Appeal.

The Commissioner is authorized to charge any necessary fees, **including the \$810 fee for the Request for Continued Examination and the \$104 fee for new claims 54 and 55**, or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Account No. 13-0017.

Respectfully submitted,

Date: February 16, 2011

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